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P32017

In re Application of
COULTON, Steven, et al.
U.S. Application No.: 09/762,354
PCT No.: PCT/EP99/05584
International Filing Date: 03 August 1999
Priority Date: 05 August 1998
Attorney's Docket No.: P32047
For: NOVEL COMPOUNDS


DECISION

The petition for revival under 37 CFR 1.137(b) filed 23 August 2001 in the above-captioned application is hereby **GRANTED** as follows:

Applicants' statements in the petition that they "fully intended to file the National stage entry on February 5, 2001" and failed to do so only because inclement weather precluded delivery of the application to the post office are construed as being the statement required by 37 CFR 1.137(b)(3), that is, a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." Applicants must notify this Office if this is not a correct interpretation of these statements. Based on this interpretation of the statements contained in the petition for revival, item (3) under 37 CFR 1.137(b) is satisfied.

Applicants have submitted the basic national fee and the requirements of 37 CFR 1.137(b) have been satisfied.

This application is being returned to the National Stage Processing Division of the Office of PCT Operations for further processing in accordance with this decision, including the mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an executed oath or declaration and the surcharge for filing the declaration later than thirty months after the priority date.


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DECISION

This decision is issued in response to applicants' "Petition Under 35 U.S.C. §21 and 37 CFR §1.6(e)" filed on 06 February 2001. No petition fee is required.

BACKGROUND

On 03 August 1999, applicants filed international application PCT/EP99/05584 which claimed a priority date of 05 August 1998 and which designated the United States. On 17 February 2000, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

On 29 February 2000, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 05 February 2001.

On 06 February 2001, applicants filed the petition considered herein. The petition was accompanied by, among other materials, a transmittal letter for entry into the national stage in the United States which included the authorization to charge Deposit Account No. 19-2570 the \$860 basic national fee.

In the petition, applicants seek to have the 06 February 2001 submission accorded a filing date of 05 February 2001 because a severe snow storm in King Of Prussia, PA (applicants' location) prevented applicants from depositing the materials with the United States Postal Service (USPS) on 05 February 2001.

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DISCUSSION

The petition relies on 35 U.S.C. 21 and 37 CFR 1.6(e). 35 U.S.C. 21(a) states (emphasis added):

(a) The Commissioner may by rule prescribe that any fee or paper required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service **but for postal service interruption or emergencies designated by the Commissioner.**

37 CFR 1.6(e) states (emphasis added):

(e) If interruptions or emergencies in the United States Postal Service which have been so designated by the Commissioner occur, the Patent and Trademark Office will consider as filed on a particular date in the Office any correspondence which is:

(1) Promptly filed after the ending of the designated interruption or emergency; and

(2) Accompanied by a statement indicating that such correspondence would have been filed on that particular date if it were not for the designated interruption or emergency in the United States Postal Service.

By their express terms, both of the cited provisions pertain to emergency interruptions in USPS service. Applicants here have not provided a statement or any other evidence demonstrating that the weather conditions in King of Prussia, PA on 05 February 2001 caused any interruptions in USPS service. Applicants only state that the weather conditions prevented them from reaching the local post office. Because no evidence has been presented that the weather conditions caused an interruption in USPS service on 05 February 2001, 35 U.S.C. 21(a) and 37 CFR 1.6(e) are inapplicable here. Applicants' submission was therefore properly accorded a filing date of 06 February 2001, the date the materials were deposited as Express Mail with the USPS.

Based on the above, applicants failed to submit payment of the basic national fee before the expiration of thirty months from the priority date. Accordingly, pursuant to 37 CFR 1.495(h), this application became abandoned with respect to the United States at midnight on 05 February 2001.

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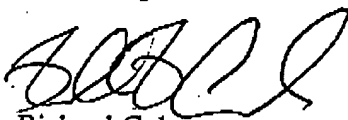
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CONCLUSION

Applicants' petition under 35 U.S.C. 21 and 37 CFR 1.6(e) is **DISMISSED** without prejudice.

This application is **ABANDONED** with respect to the United States as of midnight on 05 February 2001.

The application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for mailing of a Notification Of Abandonment (Form PCT/DO/EO/909).



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